THE HON'BLE SRI JUSTICE K.C.BHANU

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WRIT PETITION NO.10161 OF 2002.

DT.26-07-2005

Between:

R.Jogarao, s/o Bairagi, 39 yrs, working as Foreman(Elec),

CME (Elec.Maintenance Section), Mechanical Department,

Residing at MIG-345/A, D.No.39-33-94,

Madhavadhara Vuda Colony, Visakhapatnam-18

…. Petitioner

A n d

1.Government of India, represented by

its Secretary, Ministry of Defence,

'Vay Bhava' Air Head Quarters,

South Block, New Delhi 110 011 and others

… Respondents

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ORDER:

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This writ petition is filed seeking a Mandamus declaring the orders dated, 16-10-2001 of the first respondent,

and 25-10-1993 and 04/08-09-1989 of the fifth respondent, declining to grant disability pension to the petitioner, as illegal and arbitrary and to set aside the

same and also direct the respondents to pay the disability pension to the petitioner.

It is the case of the petitioner that he joined in the Indian Air Force on 16-08-1981 as Technical Fitter (Electrical). While so, the petitioner was discharged from service on 02-08-1987 on medical grounds as he suffered from a disease *Schizophrenia Phychosis.* The petitioner submitted a representation to the fifth respondent for disability pension, but the same was rejected by the order dated 04/08-09-1989. Against the said order, he submitted another representation to the second respondent, but the same was also rejected by the order dated 10-01-1991 and on further representation to the fifth respondent, the same also ended in rejection by order dated 25-10-1993. To the representation of the petitioner dated 30-11-1994, the fifth respondent informed him to prefer second appeal to the first respondent and, as such, he preferred second appeal on 05-07-1995, which was kept pending. Aggrieved by the inaction of the respondents in not granting disability pension by keeping his appeal pending for the last six years, he filed WP.No.11072 of 2001 and by orders dated 08-06-2001, this Court directed the first respondent to consider and dispose of the second appeal, dated 05-07-1995 on merits in accordance with law within a period of six months. As the first respondent did not dispose of his appeal, he filed CC.No.1282 of 2001 and by orders dated 16-10-2001, the first respondent rejected the claim of the petitioner. Aggrieved by the same, the petitioner filed the present writ petition.

The respondents filed counter-affidavit stating that disability pension claim of the petitioner was taken up with the Pension Sanctioning Authority in consultation with Medical Adviser (Pension) attached to them and the same was rejected by the Pension Sanctioning Authority on the ground that the disease with which the petitioner suffered during his service is neither attributable to nor aggravated by Air Force service and, as such, the petitioner was not entitled to invalid pension.

The learned counsel appearing for the petitioner contended that at the time of joining the service, the petitioner was found medically fit to discharge his duties and thereafter during the course of employment, he suffered from Schizophrenic Physchosis and, therefore, as per Rules he is entitled to the invalid pension. He further contended that no opportunity was given to the writ

petitioner before discharging him from service and that Regulation 153 of Pension Regulations was totally ignored by the respondents. He also relied on some of the decisions to substantiate his case.

On the other hand, the learned standing counsel appearing for respondents contended that based on the decision of the competent medical board and on their report that the petitioner suffered from *Schizophrenic psychosis,* which is neither attributable to nor aggravated by the Air Force service, therefore, he was not entitled to any disability pension.

The petitioner was appointed as Technical Fitter (Electrical) in the Indian Air Force on 16-08-1981. At the time of joining the service, he was found medically fit and thereafter he was attacked with the disease of *Schizophrenic psychosis,* and the doctors who treated him certified the loss of his disability at 40%. The petitioner was referred to the medical board. Based on the medical board's opinion, the petitioner was discharged from service on 02-0-8-1987 medical grounds on. Thereafter he made a representation to the second respondent, but the same was rejected. On further representation, the fifth respondent informed him to prefer second appeal. After filing the second appeal, no orders have been passed for about six years. Therefore, he filed WP.No.11072 of 2001, wherein this Court by orders dated 08-06-2001 directed the first respondent to consider and dispose of the second appeal, dated 05-07-1995 on merits in accordance with law within a period of six months. Thereafter, as the second appeal was not disposed of, the petitioner filed C.C.No.1282 of 2001. Later, the appeal was disposed of by the second appellate authority by its orders dated 16-10-2001, rejecting the claim of the petitioner. Challenging the same, the present writ petition is filed.

The second appeal was rejected by the Defence Ministry unanimously on the ground that as the disease from which the petitioner suffered during his service and on which his claimed is based, is neither attributable to nor aggravated by the Air Force service.

Regulation 173 of the Pension Regulations for the Air Force 1961 (Part I) which includes primary conditions for grant of disability pension, reads as follows:-

> "Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of

disability, which is attributable to or aggravated by Air Force and is assessed at 20% or over."

A plain reading of the above regulation makes it clear that an individual is entitled to invalided pension on account of disability which is attributable to or aggravated by the Air Force service. Unless a person is attacked with any disease, which is attributable to or aggravated by any Air Force service, the Rules specifically provides for grant of pension in such cases only.

Rule 17(b) of the said Rules provides that at the time of invalidment/release of service personnel medical views on attributability/aggravation and degree of disability shall be given by the Invaliding Medical Board/Release Medical Board. If the findings of this Board are recommendatory nature, the same shall be reviewed by the competent Medical Authority. The competent Medical Authority may for reasons to be recorded in writing, alter or modify the recommendations of the Lower Medical Authorities.

Admittedly, in this case the petitioner was referred to the competent medical authority for grant of invalid pension. The competent medical authority after review of the lower medical authority's report, study of related medical/service documents, the clinical profile recorded and keeping in mind the actiology and nature of disease, shall evaluate the role played by service factors in the onset/progress of the disability. The recommendations of the competent Medical Authority have been accepted by the Pension Sanctioning Authority. So, it is for the petitioner to satisfy that the disease from which he suffered during the course of his employment is attributable to the Air Force service or the disease has been aggravated thereby. If the disease is accepted as having arisen in service, it must be established that the conditions of the military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of the duty in military service. There is no such evidence available to show that the disease from which the petitioner was attacked was attributable to the service or aggravated by virtue of discharging his duties for the Air Force.

The learned counsel for the petitioner placed strong reliance on the decision of the Apex Court in ***UNION OF INDIA V. BALJIT SINGH,*** wherein it was held

thus:

> **"**It is seen that under Rule 173 disability pension
> would be computed only when disability has
> occurred due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from clauses (a) to (d) of paragraph 7 which contemplates that in respect of a disease the rules enumerated thereunder required to be observed. Cl.(c) provides that if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed the onset of the disease and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury *per se* is on account of military service. In view of the report of the Medical Board of Doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service."

Even the above decision also clearly establishes that when a person sustained any injury, it must be due to military service or was aggravated that contributed to invalidation of such military service.

The learned counsel also placed reliance on ***REGIONAL PROVIDENT FUND COMMISSIONER V.DEEPAK KULKARNI's*** case, wherein it was held thus:

> "In the instant case, the certificate issued by the Medical Board clearly shows that the respondent has suffered permanent disability which is question of fact and therefore, the finding cannot be challenged by the appellants in the writ proceedings. We have already noticed different columns mentioned in the Certificate wherein the Doctors have clearly mentioned that the respondent cannot discharge his functions effectively because of the total disablement. The respondent in this case was incapacitated for all work by the post-Traumatic
> Right – Spastic Hemiplegia and the respondent will not be able to do any work and therefore, in our opinion, the disablement is 100%. In the instant case, it is a matter of record that on account of the injury sustained by the respondent, he became physically and permanently disabled and after examination, the Medical Board issued a certificate stating that the respondent has sustained permanent disability. The doctors have opined that the disability is equivalent to 75% to 80%. In our opinion, the

> percentage of disability is not the criteria. But the criteria is whether the disablement incapacitates the employee for all work which he was capable of performing at the time of disablement. In the instant case, the respondent had worked as Supervisor and he was hit by a vehicle on 11.9.1998 while on the way to his home after duty and on account of the injury sustained, he became permanently disabled.

The decision relied on by the learned counsel has no application to the case on hand because, though it deals with disability of pension, the said decision was ordered with reference to the employees pension scheme.

The learned counsel also placed reliance on ***A.J.S.CHAUDHARY V.UNION OR INDIA*'s** case, wherein it was held thus:

> "The ratio of the decisions, referred to herein above, fully support the argument of Shri Randhawa that the rejection of petitioner's claim for disability pension is legally unsustainable because at the time of his acceptance for military service, no note was recorded that he was suffering from Schizophrenia and the opinion recorded by the Medical Board at the time of his discharged from service does not contain a note that the disease was such which could not be detected at the time of petitioner's entry in the service.

No doubt, in this case also the petitioner was not suffering from any disease at the time of joining service, but at the same time as Regulation 173 specifically provides that the disease was caused during discharge of service rendered by him or such disease was aggravated because of the nature and functions of his duties. Therefore, the above decision has no application to the present facts of the case.

Regulation 173 of the Pension Regulations specifically provides that unless the disease is attributable to or aggravated, an individual is not entitled to any pension.

Admittedly, in this case, the petitioner was suffering from 40% disability. The suffering of disability to the extent of 40% is not denied or disputed. Mere suffering of any disability by itself is not a ground for entitlement of any invalid pension, because it must be shown that such disease was aggravated or attributable to during discharge of his duties. Such material is lacking in this

case. Therefore, the authorities concerned rightly rejected the case of the petitioner.

Having regard to the facts and circumstances of the case, I see no grounds to interfere with the impugned proceedings.

Writ petition is devoid of merits and it is accordingly dismissed. No costs.

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26-07-2005.

Lrkm.